and it therefore could not have any conceivable effect on the bankruptcy estate. It was therefore not "related" to a claim before the bankruptcy court under § 1334(b) and is thus completely different from this case.

Petitioner's reliance on *In re Kubly*, 818 F.3d 643 (7th Cir. 1987), to illustrate a conflict is likewise misplaced. Pet. at 5, 11, 16. In *Kubly*, the matter before the bankruptcy court had absolutely no bearing on either the debtor or the bankruptcy estate; it was a dispute between two non-debtor parties and thus was not "related to" the bankruptcy court's jurisdiction. As the Seventh Circuit explained: "The proceeds belong to the Construction Co., the Bank, or the Department; the Kublys (the Debtors) have not claimed them. The Department did not seek anything of the Kublys; its grievance was with the Construction Co. and the Bank. And the resolution of the Department's dispute with the Bank cannot affect either the Kublys or their other creditors." 818 F.2d at 645.

Simply put, the Ninth Circuit in this case found that the bankruptcy court had jurisdiction because Sokoloff's claim was "related to" Sasson's bankruptcy petition. None of the cases cited by the Petitioner reject jurisdiction in this circumstance and thus this case does not pose a conflict warranting the Court's resolution.

B. The Bankruptcy Court Had Jurisdiction To Enforce A Money Judgment In This Case Pursuant To Its Inherent Equitable Powers.

The Court of Appeals also concluded that the bankruptcy court had inherent powers to enforce the money judgment here. 424 F.3d at 870. This is clearly correct: Once the bankruptcy court entered the money judgment, it

had jurisdiction to enforce that order under the authority of any federal court to vindicate its authority and effectuate its decrees. *See Kokkonen v. Guardian Life Insurance Co. of America,* 511 U.S. 375, 379-80 (1994).

Indeed, if the Court were to accept Sasson's argument in this context, a bankruptcy court would be rendered virtually impotent. It would not have jurisdiction to enter orders to enforce its decrees, and would therefore be unable to remedy violations of the automatic stay, discharge injunction, or contempt.

The bankruptcy court unquestionably had authority to hear Sokoloff's claim against Sasson for the unpaid judgment. Once Sasson filed for bankruptcy, that was the only forum where Sokoloff could seek redress for his claim. After the bankruptcy court found in favor of Sokoloff, surely it had the authority to enforce that judgment as part of its inherent powers without ever needing to invoke supplemental jurisdiction.

CONCLUSION

For these reasons, the Petition for a Writ of Certiorari should be denied.

Respectfully submitted,

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ROBERT SASSON,

Petitioner,

v.

NORMAN F. SOKOLOFF, M.D., individually and as Trustee for CAMELOT MEDICAL GROUP, INC., PROFIT SHARING PLAN,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

REPLY BRIEF IN SUPPORT OF PETITION FOR A WRIT OF CERTIORARI

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Petitioner Robert Sasson respectfully submits this reply brief in support of his petition for a writ of certiorari to review the judgment of the United States Court of Appeals for the Ninth Circuit.

In the decision below, the Ninth Circuit held that bankruptcy courts can exercise the supplemental jurisdiction granted to district courts by 28 U.S.C. § 1367. *See* Pet. App. 6a ("[T]he bankruptcy court's 'related to' jurisdiction [under 28 U.S.C. § 1334(b)] also includes the district court's supplemental jurisdiction pursuant to 28 U.S.C. §.1367."). In so holding, the Ninth Circuit followed its own prior precedent. *See Montana* v. *Goldin* (*In re Pegasus Gold Corp.*), 394 F.3d 1189, 1194-1195 (9th Cir. 2005).

Respondent does not dispute that the circuits are sharply divided over this issue. As the petition explained, the Second Circuit, like the Ninth Circuit, has held that bankruptcy courts may exercise supplemental jurisdiction under 28 U.S.C. § 1367.[1] The Third, Fifth, Seventh, and Eleventh Circuits have reached the opposite conclusion, holding that the more restrictive grant of jurisdiction to bankruptcy courts in 28 U.S.C. § 1334(b) cannot be expanded by the exercise of supplemental jurisdiction.[2] The lower federal courts are similarly divided. *See* Pet. 12 & n.5. Scholarly commentators have repeatedly remarked on the clear disagreement among the courts on this fundamental question regarding the scope of bankruptcy jurisdiction.[3]

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[1] *See Klein* v. *Civale & Trovato, Inc.* (*In re Lionel Corp.*), 29 F.3d 88, 92 (2d Cir. 1994).

[2] *See Bobroff* v. *Continental Bank* (*In re Bobroff*), 766 F.2d 797, 802 (3d Cir. 1985); *Bass* v. *Denney* (*In re Bass*), 171 F.3d 1016, 1024 (5th Cir. 1999); *Walker* v. *Cadle Co.* (*In re Walker*), 51 F.3d 562, 573 (5th Cir. 1995); *Wisconsin Dep't of Indus., Labor & Human Relations* v. *Marine Bank Monroe* (*In re Kubly*), 818 F.2d 643, 645 (7th Cir. 1987); *Miller* v. *Kemira* (*In re Lemco Gypsum, Inc.*), 910 F.2d 784, 789 (11th Cir. 1990).

[3] *See* Ralph Brubaker, *On the Nature of Federal Bankruptcy Jurisdiction: A General Statutory and Constitutional Theory*, 41 Wm. & Mary L. Rev. 743, 928 (2000); Susan Block-Lieb, *The Case Against Supplemental Jurisdiction: A Constitutional, Statutory and Policy Analysis*, 62 Fordham L. Rev. 721, 756 (1994); *see also* William L. Norton, Jr., 1 *Norton Bankruptcy Law & Practice* 2d § 4:70 (2005).

Nor does respondent question the importance of this issue to the day-to-day administration of bankruptcy cases throughout the country, a point that is underscored by the *amicus* brief in support of certiorari filed by the National Association of Consumer Bankruptcy Attorneys.

Respondent's sole contention is that the Ninth Circuit did not need to reach the issue that it explicitly addressed: whether bankruptcy courts can exercise supplemental jurisdiction under section 1367. Respondent argues that the bankruptcy court's entry of judgment on petitioner's nondischargeable debt could have been sustained on a different ground: that such an action falls within section 1334(b)'s grant of jurisdiction over proceedings "related to" the bankruptcy case, without regard to supplemental jurisdiction under section 1367. Br. in Opp. 4-9.

That contention is simply incorrect. It is well-settled that a matter is "related to" a bankruptcy case within the meaning of section 1334(b) only if it can have an effect on the bankruptcy estate. *See Celotex Corp.* v. *Edwards*, 514 U.S. 300, 308 & n.6 (1995). And a judgment, like the one at issue here, that runs against a debtor personally can have no effect whatsoever on that debtor's bankruptcy estate.

As we explain below, the Bankruptcy Code provides for two separate and distinct proceedings. One is a proceeding to establish a claim against the bankruptcy estate, for the purpose of recovering the creditor's proportional share of the estate's assets. *See* 11 U.S.C. § 502. The second is an action running against an individual debtor personally that seeks to establish by way of declaratory judgment that a particular debt is not discharged in bankruptcy. *See id.* § 523. If a debt is found nondischargeable, the creditor may seek to recover on that debt against the debtor personally, after the bankruptcy, from that debtor's post-bankruptcy assets or income.

The specific question raised here is whether a bankruptcy court hearing an adversary proceeding seeking a declaratory judgment that a particular debt is nondischargeable may *also* exercise jurisdiction over a claim for judgment

against the debtor on the nondischargeable debt itself. Contrary to respondent's contention, the outcome of such a lawsuit can have no conceivable effect on the assets or administration of the bankruptcy estate. It affects only the debtor personally—as courts and commentators that have considered the issue have agreed.[4] And it therefore cannot fall within section 1334(b)'s grant of "related to" jurisdiction.

Rather, the only possible basis for jurisdiction over such nondischargeable debts is the basis on which the Ninth Circuit expressly relied: *supplemental* jurisdiction under section 1367 over matters that share a factual nexus with the issues to be determined in the nondischargeability proceeding. *See* Brubaker, 41 Wm. & Mary L. Rev. at 918 (noting that courts that have found jurisdiction to enter judgment on nondischargeable debts have "quite conspicuously" employed a "supplemental [jurisdiction] approach"). The question posed in the petition—whose certworthiness is not disputed—is thus squarely presented here.

I. THE ENTRY OF JUDGMENT ON A NONDISCHARGEABLE DEBT IS NOT WITHIN THE "RELATED TO" JURISDICTION UNDER SECTION 1334

Section 1334(b) of title 28 grants district courts "original but not exclusive jurisdiction of all civil proceedings arising under title 11, or arising in or related to a case under title 11." 28 U.S.C. § 1334(b). Section 157(a) in turn permits district courts to refer "any or all proceedings arising under title 11 or arising in or related to a case under title 11" to the bankruptcy judges for that district. *Id.* § 157(a).[5]

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[4] *See, e.g., First Omni Bank* v. *Thrall* (*In re Thrall*), 196 B.R. 959, 969 (Bankr. D. Colo. 1996) ("[a]n award of damages in favor of the creditor and against the debtor has no effect on the handling of the estate or its administration" and is outside the "related to" jurisdiction); Brubaker, 41 Wm. & Mary L. Rev. at 916 (2000) (under the governing standard for "related to" jurisdiction, there is "no federal bankruptcy jurisdiction to enter a money judgment against an individual debtor on a nondischargeable debt"); Pet. 15 n.6 (citing cases).

[5] Absent the parties' express consent, bankruptcy courts are permitted to enter final judgment only on matters "arising under" the Bankruptcy Code or "arising in" a bankruptcy case, *see* 28 U.S.C. § 157(b)—the

This Court has made clear that "related to" jurisdiction in bankruptcy extends only to matters whose resolution can have some effect on the bankruptcy estate. *See Celotex*, 514 U.S. at 308 & n.6. As the leading court of appeals case on the question has explained, "[A] civil proceeding is related to bankruptcy [if] *the outcome of that proceeding could conceivably have any effect on the estate being administered in bankruptcy*. . . . An action is related to bankruptcy if the outcome could alter the debtor's rights, liabilities, options, or freedom of action . . . and . . . *in any way impacts upon the handling and administration of the bankrupt estate*." *Pacor, Inc.* v. *Higgins*, 743 F.2d 984, 994 (3d Cir. 1984) (second emphasis added).

By definition, the entry of judgment against a debtor on a nondischargeable debt can have no effect on the bankruptcy estate. Such a judgment can be enforced only against the debtor's post-bankruptcy assets, which are outside the estate in bankruptcy, *see* 11 U.S.C. § 541, and thus cannot diminish the estate's assets or affect its administration.

Respondent's contrary argument is based entirely on the erroneous premise that his complaint seeking a judgment against the debtor personally amounted to the filing of a "claim" against the bankruptcy estate. Br. in Opp. 6-7. It did not. The procedure for asserting a claim against the *estate* is entirely distinct from the procedures for determining nondischargeability of a debt and for obtaining a judgment against the *debtor personally* on that nondischargeable debt. As one court has explained, Congress "separated the determination of dischargeability of a debt from the allowance of a claim. The Code gives creditors two separate and distinct causes of action. Neither determination affects the other." *Thrall*, 169 B.R. at 966.

"core" matters that may constitutionally be adjudicated by a non-Article III tribunal pursuant to *Northern Pipeline Construction Co.* v. *Marathon Pipe Line Co.*, 458 U.S. 50 (1982). As explained in the amicus brief of Professor G. Eric Brunstad, Jr., a reading of the jurisdictional statute that permits a non-Article III bankruptcy court to enter final judgment on a nondischargeable debt arising under state law thus raises substantial constitutional concerns.

1. *The claims allowance process.* The filing of a bankruptcy petition creates a new legal entity known as the "bankruptcy estate." Congress has specifically prescribed the universe of property that is held by that "estate" and is administered by the bankruptcy trustee for the benefit of creditors. *See* 11 U.S.C. § 541. In an individual chapter 7 bankruptcy such as the one here, the estate consists of all the creditor's assets as of the filing of the petition, save for assets that are "exempt" from the reach of creditors. *See id.* § 522; *Rousey* v. *Jacoway*, 544 U.S. 320, 325-326 (2005). Exempt property and any earnings of an individual chapter 7 debtor after the bankruptcy filing are outside the estate and generally cannot be reached by pre-bankruptcy creditors.

The Bankruptcy Code provides specific procedures for distributing the estate's assets among creditors. In order to receive a distribution from the estate, a creditor must file a proof of claim against the estate. *See* 11 U.S.C. § 501. The claim is then "deemed allowed" unless an objection to the claim is filed. *Id.* § 502(a). In that case, the court may hold a hearing to determine whether to "allow" the claim, and if so, in what amount. *See id.* § 502(b). Even when a claim is contested, however, the claims allowance process is generally a summary proceeding, not a full-blown lawsuit. *See Katchen* v. *Landy*, 382 U.S. 323, 329 (1966). If the claim is "allowed," the creditor does not obtain a judgment that runs against the debtor, but merely a determination that he is entitled to a *pro rata* share of the estate's assets, based on that allowed claim. *See* 11 U.S.C. §§ 726, 1129, 1322.

At the end of the bankruptcy process, the debtor typically emerges from bankruptcy and receives a discharge of all his pre-bankruptcy debts. *See* 11 U.S.C. §§ 727, 1141, 1328(b). The discharge "operates as an injunction" against any action a creditor might take to collect the discharged debt. *Id.* § 524. It thereby serves the central purpose of bankruptcy, to provide individual debtors with a fresh start, unencumbered by pre-bankruptcy debt. *See, e.g., Grogan* v. *Garner*, 498 U.S. 279, 286-287 (1991).

2. *Nondischargeability proceedings.* Separate and apart from the procedures for obtaining a distribution from

the *estate*, the Bankruptcy Code sets out a procedure by which a creditor may obtain a determination that a particular debt is nondischargeable, and thus may continue to be enforced against an individual *debtor personally*, even after the bankruptcy. Section 523 of the Bankruptcy Code enumerates several categories of debts that are nondischargeable, including, as specifically applicable here, debts "for willful and malicious injury by the debtor to another entity." 11 U.S.C. § 523(a)(6).

A creditor seeking a determination of nondischargeability must initiate an "adversary proceeding," in which the creditor must prove that the debt falls within one of the categories of nondischargeable debt enumerated in section 523. *See* Fed. R. Bankr. P. 4007. Such an adversary proceeding—unlike the summary process for the "allowance" of claims—is initiated by a complaint, *see* Fed. R. Bankr. P. 7003, and, as a procedural matter, is essentially equivalent to a non-bankruptcy civil action. If the creditor prevails, he obtains a judgment declaring the debt nondischargeable.

Such a nondischargeability determination is not itself a judgment against the debtor entitling the creditor to recover on the nondischargeable debt. *See Brown* v. *Felsen*, 442 U.S. 127, 134-135 (1979) (explaining that the issues presented in a state court action on a debt are quite different from those presented in a nondischargeability proceeding); *Resolution Trust Corp.* v. *McKendry* (*In re McKendry*), 40 F.3d 331, 335 (10th Cir. 1994). But as part of a complaint seeking a determination that a debt is nondischargeable, creditors often, as here, also assert a separate claim asking the bankruptcy court to enter a judgment on the underlying debt—typically a debt arising under state law. The question whether a bankruptcy court may exercise jurisdiction over that separate claim for judgment on the nondischargeable debt turns on whether the court may exercise supplemental jurisdiction.

Contrary to respondent's contentions, a claim seeking a judgment on a nondischargeable debt is in no way "part of the claims resolution process." Br. in Opp. 7. A creditor who files a nondischargeability action also has a separate right to

seek a distribution from the estate. But, as explained above, the way to obtain such a distribution is to file a proof of claim against the *estate*—not to bring an action seeking judgment against the *debtor personally*. While an allowed claim permits the creditor his *pro rata* share of the estate, the *only* effect of a judgment on a nondischargeable debt is to facilitate the creditor's ability to recover against the debtor personally, after the bankruptcy, from assets that are outside the bankruptcy estate. *See, e.g., Thrall*, 196 B.R. at 969 (explaining that a judgment against the debtor on a nondischargeable debt "is significant only after the bankruptcy process is concluded. The damage claim impacts the bankruptcy process only to the extent it is allowed under § 502").

The entry of judgment on a nondischargeable debt, by definition, can thus have no effect on the bankruptcy estate.[6] And because it cannot affect the estate, an action seeking judgment on a nondischargeable debt is not within section 1334(b)'s grant of jurisdiction over matters "related to" the bankruptcy case. Accordingly, and contrary to respondent's contentions, the Ninth Circuit's judgment cannot rest on "related to" jurisdiction, but can only be understood as resting on the premise that bankruptcy courts can exercise supplemental jurisdiction under section 1367.

II. THE NINTH CIRCUIT'S DECISION CANNOT BE RECONCILED WITH DECISIONS OF THE THIRD, FIFTH, SEVENTH, AND ELEVENTH CIRCUITS

The Ninth Circuit did not suggest that the entry of judgment against petitioner on his nondischargeable debt would have any effect on the bankruptcy estate—the governing test for "related to" jurisdiction. Rather, the court expressly relied on the rationale that the "related to" juris-

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[6] Courts and commentators that have expressly considered whether judgment on a nondischargeable debt can affect the bankruptcy estate have agreed that it cannot. *See* Brubaker, 41 Wm. & Mary L. Rev. at 914-916; Alan M. Ahart, *Enforcing Nondischargeable Money Judgments: The Bankruptcy Courts' Dubious Jurisdiction*, 74 Am. Bankr. L.J. 115, 118-119 (2000); Pet. 15 & n.6 (citing cases). Respondent cites no authority to the contrary.